

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(El Dorado)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
RICHARD WILLIAM HAMLIN,  
  
Defendant and Appellant.

C053982

(Super. Ct. No.  
P05CRF0161)

MODIFICATION OF  
OPINION AND DENIAL OF  
PETITION FOR REHEARING

(NO CHANGE IN  
JUDGMENT)

APPEAL from a judgment of the Superior Court of El Dorado County, Eddie T. Keller, Judge. Affirmed as modified.

Scott Concklin, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Stephen G. Herndon, Supervising Deputy Attorney General, Melissa Lipon, Deputy Attorney General, for Plaintiff and Respondent.

THE COURT:

The opinion of this court filed February 9, 2009, in the above entitled case is modified as follows:

On page 63, in the first full paragraph, delete the remainder of the paragraph following the second sentence ("Not so."), and insert the following in its place:

Torture requires actual infliction of great bodily injury, but it does not require that the injury be inflicted by any means of force, let alone by means of force likely to produce great bodily injury. For example, a caretaker would be guilty of torturing an immobile person in his care if the caretaker, acting with the intent to cause extreme suffering for a sadistic purpose, deprived that person of food and water for an extended period of time, resulting in great bodily injury to the person. In such a circumstance, the caretaker would have inflicted great bodily injury without using any force and thus would not be guilty of committing assault by means of force likely to produce great bodily injury. Because the use of force is not a necessary element of the crime of torture, assault by means of force likely to produce great bodily injury is not a lesser included offense of torture.

There is no change in the judgment.

Appellant's petition for rehearing is denied.

BY THE COURT:

SIMS, Acting P.J.

ROBIE, J.